

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON**

JOHN MOSS, III,

Petitioner,

v.

Civil Action No. 2:09-cv-01406

**DAVID BALLARD, Warden,
Mount Olive Correctional Complex,**

Respondent.

**RESPONDENT'S RESPONSE TO COURT'S
ORDER FOR ADDITIONAL RECORDS**

Pursuant to this Court's Order of April 21, 2011, Respondent herein provides the additional records, Respondent's Exhibits 34 through 39, requested in the above-captioned case

Respectfully submitted,

DAVID BALLARD, Warden,
Mount Olive Correctional Complex,
Respondent,

By counsel,

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

/s/ Robert D. Goldberg

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INDEX TO EXHIBITS

Exhibit 34	Petition for Writ of Habeas Corpus, Case No. 05-MISC-298
Exhibit 35	.....	Petition for Writ of Habeas Corpus, Case No. 06-MISC-245
Exhibit 36	.....	Petition for Writ of Habeas Corpus, Case No. 07-MISC-403
Exhibit 37	.....	Memo In Support of Motion to Suppress
Exhibit 38	.....	Vol. I, Trial Transcript February 21, 1984 (Voir Dire) ¹
Exhibit 39	.....	Vol. II, Trial Transcript, February 28, 1984 (Voir Dire)

¹The Court noted in its April 21 Order that it has reason to believe an *in-camera* hearing on a motion to suppress Petitioner's confession was conducted on or about February 21, 1984, during the *voir dire* portion of the first trial. However, although the trial court conducted hearings on several motions to suppress certain physical evidence, on February 21, 1984, there appears to be no full hearing on the suppression of Petitioner's confession. The next day of *voir dire* was February 28. It also does not appear to contain a hearing on the motion to suppress Petitioner's confession. Respondent, admittedly, has done only a cursory review of the volumes I and II of the transcript at this point because the Kanawha County Clerk's Office was able to secure these records only as of Friday, May 6. The record also indicates that *voir dire* continued until at least the next day of court, but according to staff at the clerk's office, it appears that volume III of the 1984 trial transcript is missing or misplaced and that the first trial transcript is incomplete. Upon further Order of this Court, Respondent will provide an affidavit from the Clerk's office if necessary, and further confirm that Volume III of the trial is missing, if indeed it is unobtainable.

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2011, I electronically filed the foregoing “Respondent’s Response to Court’s Order for Additional Records” along with Exhibits 34-39, with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed, by United States Postal Service, the aforesaid document(s) to the following non-CM/ECF participant:

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/s/ Robert D. Goldberg
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